

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* STEPHEN CARNEY

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Appeal 2007-2468  
Application 09/712,101  
Technology Center 2100

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Decided: October 23, 2007

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Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP,  
and STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's Final Rejection of claims 2, 4-12, and 21-33. We have jurisdiction under 35 U.S.C. § 6(b). We affirm in part.

A. INVENTION

The invention at issue on appeal involves file transfer between computer systems. Computer files, including video files have been stored on

servers and streamed to requesting computer systems. As such video or media files grow in size, bandwidth limitations of a particular server storing the video or media file may become problematic. This has been particularly true when multiple requesting computer systems request the same video or media file (Specification 3).

In contrast, the Appellant's invention permits streaming video or media from servers that store a selection of video or media files. (*Id.* 6). Particularly, a master streaming media server locates an acceptable streaming media server containing a requested media file. The streaming media client receives setup information regarding the requested multimedia file such that a requesting client may directly access the multimedia file from the media server. (*Id.* 4). A streaming media connection is established between a requesting streaming media client and the streaming media server (*Id.* 11).

#### B. ILLUSTRATIVE CLAIMS

Claims 4 and 8, which further illustrate the invention, follow.

4. A distributed streaming media server system, comprising:
  - a plurality of streaming media servers that each store a selection of multimedia files;
  - a master streaming media server communicatively coupled to the plurality of streaming media servers and that compiles mapping information regarding a location of each of the multimedia files that are stored on each of the plurality of streaming media servers; and

at least one streaming media client that requests access to a multimedia file through the master streaming media server and receives setup information regarding the requested multimedia file such that the at least one streaming media client may directly access the multimedia file from one of the plurality of streaming media servers,

wherein the at least one streaming media client receives the setup information from one of the plurality of streaming media servers.

8. The distributed streaming media server system of claim 4 wherein the master streaming media server includes a load poll thread, a load average queue, and load average threads to determine the load balancing among the plurality of streaming media servers.

#### C. REJECTION

Claims 2, 4-12, and 21-33 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,412,004 B1 ("Chen") and U.S. Patent No. 6,360,262 B1 ("Guenthner").

#### II. CLAIM GROUPING

Claims 2, 4-7, 9-12, and 21-33 are subject to the same ground of rejection as a group. (Br. 4-11). Appellant separately argues patentability of claim 8. We select claim 4 as the sole claim on which to decide the appeal of the claims of the group. We separately decide the appeal of claim 8.

### III. CLAIMS 2, 4-7, 9-12, AND 21-33

“Rather than reiterate the positions of parties *in toto*, we focus on the issues therebetween.” *Ex Parte Filatov*, No. 2006-1160, 2007 WL 1317144, at \*2 (BPAI 2007). The Examiner asserts that Chen discloses each of the features of claim 4 but “does not explicitly teach [that] ... at least one streaming media client receives the set up information from one of the plurality of streaming media servers.” (Answer<sup>1</sup> 4). The Appellant does not traverse this finding (Br. 5). The Examiner further argues that Guenther discloses a system and method of routing in which a server “sends its response (*i.e., sending setup information*) directly to the client (**step 3**) and the client dialogs with the server for subsequent access to the requested multimedia file (**step 4**) (**Guenther, Fig. 4B, col. 4, line 64 – col. 5, line 12**).” (*Id.* 5). Also, the Examiner finds that combining Chen and Guenther would have been obvious to “select the best provider (*i.e., the most appropriate server*) and redirect or forward the request to the selected server ... in handoff mode.” (*Id.* 11).

The Appellant argues there would have been no motivation or suggestion to combine the teachings of Chen and Guenther because “there simply did not exist any desirability to incorporate the teachings of Guenther into the system of Chen.” (Br. 8). Also, the Appellant asserts that combining the Chen and Guenther references would “change the principle of operation of the Chen system and would also render the Chen system unsatisfactory for its intended purpose for enabling the client to select a

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<sup>1</sup> We rely on and refer to the revised Examiner’s Answer, in lieu of the original Examiner’s Answer, because the latter was defective. We will not consider the original in deciding this appeal.

multimedia server from a list of multimedia servers provided by a metaserver.” (*Id.* 6).

Therefore, the issue before us is whether Appellant has shown that the Examiner erred in rejecting claims 2, 4-7, 9-12, and 21-33 as unpatentable over Chen and Guenther.

### 1 ANALYSIS

Claim 4 requires a master streaming media server coupled to a plurality of streaming media servers and a streaming media client that requests access to a multimedia file through the master streaming media server. The streaming media client receives setup information from the streaming media server (Br. Claims Appendix).

The Appellant’s argument that there “did not exist any desirability to incorporate the teachings of Guenther into the system of Chen” (Br. 8) ignores the Examiner’s asserted desirability of “select[ing] the ‘best provider’ and redirect[ing] ... the request to the selected server as operating in ‘handoff’ mode ...” as provided by the Examiner. Based on the record before us, the Appellant has failed to show that there would have been no desirability for one of ordinary skill in the art to “select the ‘best provider’ and redirect ... the request to the selected server as operating in ‘handoff’ mode ...”, for example.

Regarding Appellant’s assertion that Guenther would “change the principle of operation of the Chen system and render the Chen system unsatisfactory for its intended purpose for enabling the client to select a multimedia server from a list of multimedia servers provided by a

metaserver,” (*Id.* 6) we disagree with the Appellant that the intended purpose of Chen is to send a list of servers to the client or that modifying Chen with Guenthner would render the Chen system unsatisfactory for its intended purpose.

Chen discloses a distributed streaming media server system (Col. 5, ll. 45-51). As one example of an implementation of the system, a metaserver supplies a client computer with a list of multimedia servers and the client computer connects to a server including the particular multimedia content (Col. 6, ll. 41-47.) The metaserver contains an algorithm that allows “the metaserver to balance the load (a particular multimedia content) across all available multimedia servers by dynamically assigning clients to different multimedia servers each time a client requests a particular multimedia content.” (Chen, col. 7, ll. 4-8). Hence, the intended purpose of the Chen system is to balance multimedia content delivery from servers to requesting clients.

The question remains whether modifying the Chen reference with Guenthner would have rendered the Chen system unsatisfactory for its intended purpose of balancing multimedia content delivery from servers to requesting clients. We find, based on the record before us, that the Appellant has made no showing that whether a client receives data from a metaserver or from a media server would have any bearing on Chen’s intended purpose of balancing multimedia content delivery from the server to the client. Therefore, we cannot conclude that modifying Chen with the teachings of Guenthner would be unsatisfactory for Chen’s intended purpose of balancing multimedia content delivery.

It follows that the Appellant has not shown that the Examiner erred in rejecting claim 4 as being obvious over the combination of Chen and Guenthner.

#### IV. CLAIM 8

Claim 8 recites that the master streaming media server includes a load poll thread, a load average queue, and load average threads. (Br. 11). The Examiner contends that Chen discloses that a metaserver “**selects the proper algorithm to balance the load such as by measuring how busy each multimedia server is (i.e., load poll thread)** and how close a particular client is to each multimedia server with the proper content” and that “the metaserver 350 **periodically communicates with each multimedia server to receive its status information ...**.” (Answer, 12).

#### 1 ANALYSIS

Here, Chen describes an algorithm to balance the load based on multimedia servers. As Chen states, “[t]he selection of the proper algorithm allows the metaserver to balance the load (a particular multimedia content) across all available multimedia servers by dynamically assigning clients to different multimedia servers each time a client requests a particular multimedia content.” (Col. 7, ll. 4-8.) “If some multimedia servers are busy, then clients will be sent to a multimedia server that can service new clients. The total capacity of the system is the sum of capacities of all multimedia servers in the system.” (Col. 7, ll. 8-12.)

The primary passage of Chen relied on by the Examiner explains “to distribute the work, the metaserver should have a measure of how busy each multimedia server is, and how close a particular client is to each multimedia server with the proper content. To measure how busy a server is, the metaserver periodically communicates with each multimedia server to receive from each multimedia server its status information ...” (Col. 7, ll. 19-25.)

We find insufficient support in the record before us for the Examiner’s conclusion of obviousness of claim 8. We agree with the Examiner that Chen discloses selecting an algorithm to balance the load based on multimedia servers or how close a particular client is to each multimedia server with content and periodically communicating with each multimedia server to receive status information. We disagree with the Examiner that this disclosure demonstrates equivalency with the recited features of “a load poll thread, a load average queue, and load average threads.”

It follows that the Examiner erred in rejecting dependent claim 8 over Chen in view of Guenthner.

#### CONCLUSION OF LAW

On the record before us, Appellant has not shown that the Examiner erred in rejecting claims 2, 4-7, 9-12, and 21-33 over the prior art. The Examiner has failed to establish that the combination of Chen and Guenthner renders claim 8 unpatentable under 35 U.S.C. § 103(a).



DECISION

We affirm the Examiner's decision rejecting claims 2, 4-7, 9-12, and 21-33. We reverse the Examiner's decision rejecting claim 8.

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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